

## SETTLEMENT AGREEMENT

This Agreement is made and entered into on this 29<sup>th</sup> day of July, 2010, by, between and among (1) the Commonwealth of Massachusetts, through its Attorney General Martha Coakley ("Commonwealth"), and (2) Regal Entertainment Group ("Regal") (collectively, the "Parties").

WHEREAS, the Civil Rights Division of the Massachusetts Attorney General has received complaints from deaf and blind individuals alleging discrimination on the basis of disability in several movie theater chains located in Massachusetts, including theaters owned by Regal;

WHEREAS, captioning technology takes a movie's aural information and delivers it in a visual format for deaf and hard of hearing individuals ("Captioning Aid"). For blind and visually impaired individuals, description technology takes a movie's visual information and delivers it in an aural format ("Description Aid," and together with Captioning Aids, "Accessibility Aids");

WHEREAS, Regal makes no representation concerning the present or future availability of Accessibility Aids and/or their ability to accommodate the deaf and hard of hearing or blind and visually impaired;

WHEREAS, Regal operates twelve theaters in Massachusetts containing 129 auditoriums, including: Nickelodeon 5; Mashpee Commons 6; Harwich 6; Silver City Galleria 10; Berkshire Mall 10; Swansea Stadium 12; Westborough Stadium 12; Cape Cod Mall Stadium 12; Fenway Stadium 13; Bellingham Stadium 14; Independence Mall 14; and Solomon Pond Stadium 15;

WHEREAS, Regal provides Accessibility Aids in the form of assistive listening devices in all of its auditoriums at all locations within the Commonwealth of Massachusetts, which it believes satisfies the needs of the overwhelming majority of the deaf and hard of hearing within the Commonwealth.

WHEREAS, Regal also currently provides Accessibility Aids that provide captions and descriptive audio in one auditorium at four of its Massachusetts locations: Swansea Stadium 12; Cape Cod Mall Stadium 12; Bellingham Stadium 14; and Fenway Stadium 13;

WHEREAS, the Commonwealth alleges that the absence of Accessibility Aids in any of Regal's auditoriums located in Massachusetts violates the Massachusetts Public Accommodation Statute, M.G.L., ch. 272, §§ 92A, 98; Article 114 of the Amendments to the Massachusetts Constitution, as enforced through the Massachusetts Equal Rights Act, M.G.L. ch. 93, § 103(a);

the Massachusetts Consumer Protection Act, M.G.L. ch. 93A, § 4; and the United States Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.;

WHEREAS, Regal denies the Commonwealth's allegations and affirmatively represents that all of its Massachusetts facilities fully comply with the Massachusetts Public Accommodation Statute, M.G.L., ch. 272, §§ 92A, 98; Article 114 of the Amendments to the Massachusetts Constitution, as enforced through the Massachusetts Equal Rights Act, M.G.L. ch. 93, § 103(a); the Massachusetts Consumer Protection Act, M.G.L. ch. 93A, § 4; and the United States Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.;

WHEREAS, Regal is in various stages of considering, planning, and implementing a transition from 35 millimeter film exhibition to digital cinema. Except as otherwise provided for in this Agreement, Regal has the exclusive right to operate its facilities and select any form or nature of existing or subsequently available Accessibility Aids upon completion of such digital conversion;

WHEREAS, the Commonwealth recognizes Regal's desire for flexibility in the selection of such Accessibility Aids;

WHEREAS, the Commonwealth acknowledges that movie theater operators, including Regal, do not control which motion pictures are captioned and/or audio described, or otherwise enabled for captioning or narrative description;

WHEREAS, Regal makes no representations concerning the present or anticipated availability of motion pictures with captioning and narrative description. Regal makes no representation concerning the present or anticipated available Accessibility Aids and/or their ability to provide any form of useful accommodation to the disabled;

WHEREAS, the Parties have negotiated at arm's length and in good faith regarding installation of Accessibility Aids at Regal's theaters in Massachusetts, and endeavored to reach a compromise resolution of the disputes between them; and

WHEREAS, the Parties enter into this Agreement in the spirit of cooperation and in the mutual desire to resolve their differences.

NOW, THEREFORE, in consideration of the covenants and mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, The Commonwealth and Regal, intending to be legally bound, agree as follows:



## **1. CAPTIONING AND NARRATIVE DESCRIPTION TECHNOLOGY.**

**1.1 Existing Accessibility Aids.** Prior to the date of the execution of this Agreement, Regal provided Accessibility Aids in one auditorium at each of the following Regal locations: Swansea Stadium 12; Cape Cod Mall Stadium 12; and Bellingham Stadium 14, and Fenway Stadium 13 ("Previously Accessible Auditoriums"). During the term of this Agreement (as described in Section 2.2 of this Agreement), until Regal's obligations to equip theaters pursuant to Section 1.3 arise and are met, Regal agrees to continue to provide Accessibility Aids in the Previously Accessible Auditoriums in the same or comparable manner, and for equivalent show times, as it has since it began providing such access into such auditoriums; provided further that no provision of this Agreement requires Regal to independently produce captions or descriptions for any films screened at any Massachusetts locations.

**1.2 New Accessibility Aids - Existing Theaters.** By October 1, 2010, Regal shall install at least one (1) Captioning Aid and one (1) Description Aid in at least one auditorium with a seating capacity of at least 150 seats in each of the following Regal locations: Silver City Galleria 10; Berkshire Mall 10; Swansea Stadium 12; Westborough Stadium 12; Independence Mall 14; and Solomon Pond Stadium 15. By May 1, 2011, Regal shall install at least one (1) Captioning Aid and one (1) Description Aid in at least one auditorium with a seating capacity of at least 150 seats at the following Regal locations: Nickelodeon 5; Mashpee Commons 6; and Harwich 6. Notwithstanding Regal's obligation set forth in Section 1.3 of this Agreement, Regal may choose to continue to maintain the Accessibility Aids required by this subsection after any conversion of Regal's theaters to digital at its discretion.

**1.3 Accessibility Aid Totals After Digital Conversion.** Within twenty four (24) months of the date of the execution of this Agreement, as digital projection is deployed and captioning and narrative description becomes Commercially Available (as defined below) in digital format ("Digital Captioning and Narrative Description Technology"), to Regal theaters in Massachusetts, Regal agrees to equip its auditoriums in Massachusetts with Digital Captioning and Narrative Description Technology as set forth in the table below. Regal further agrees that one of the auditoriums equipped pursuant to Section 1.3 shall be in that theater's largest auditorium without a 3-D projector, and the other Digital Captioning and Narrative Description Technology shall be in auditoriums containing at least 150 seats. For purposes of this Agreement, "Commercially Available" shall mean in sufficient supply from third party vendors at commercially reasonable prices.

<b>Auditoriums in Theater</b>	<b>Auditoriums with Accessibility Aids</b>
1-9	1 Captioning Aid 1 Description Aid
10 +	2 Captioning Aids 2 Description Aids

**1.4 Accessibility Aids – Newly Constructed or Acquired Theaters.** Regal agrees to install Accessibility Aids in any theater it builds or acquires in Massachusetts after the date of its obligations under Section 1.3 of this Agreement are met according to the schedule set forth in Section 1.3.

**1.5 Accessibility Aids at Fenway 13.** Because of its proximity to the Perkins School for the Blind, Regal agrees to equip a third auditorium with a Description Aid at its Fenway 13 Theater within twenty four (24) months of the date of the execution of this Agreement.

**1.6 Choice of Accessibility Aid Technology.** Because it is uncertain what Accessibility Aids may be Commercially Available to provide audio captioning and narrative description in connection with digital projection, the Commonwealth agrees that, pursuant to Sections 1.3-1.5 of this Agreement, Regal may deploy any Commercially Available Accessibility Aid technology for its deaf and blind patrons. Notwithstanding the forgoing, and other than in fulfillment of Regal's obligations under Section 1.1 of this Agreement, the Parties agree that use of open captions is not a commercially reasonable Captioning Aid under this Agreement.

**1.7 Agreement on Commercially Unreasonable Alternative Solutions.** The Parties agree that the installation of Accessibility Aids for 35 millimeter film projection will not be considered commercially reasonable under Section 1.3 of this Agreement, provided Regal has converted all of its auditoriums in the theater(s) in question to digital projection technology twenty four (24) months after the date of the execution of this Agreement.

**1.8. Impasse and Commencement of Proceedings Against Regal.** If at the end of twenty four (24) months the Parties are at an impasse over the installation of Commercially Available Digital Captioning and Narrative Description Technology pursuant to Section 1.3 of this Agreement, the parties agree to reopen negotiations for a period not to exceed six months



before either seeks judicial intervention concerning any conflicts or claims related to the terms and conditions of this Agreement.

## **2. TERM AND EFFECT OF SETTLEMENT AGREEMENT.**

**2.1 Release.** Except for the obligations of Regal that are expressly set forth in this Agreement, the Commonwealth releases Regal, its agents, owners, employees, parent company, subsidiaries and affiliated companies, the successors or assigns of any of the foregoing, and all persons in active concert or participation with Regal (the "Releasees"), from any and all civil liability to the Commonwealth for the alleged discrimination on the basis of disability for the absence of Accessibility Aids for deaf and blind patrons. This provision, however, does not limit the Commonwealth's authority to commence proceedings against Regal to seek enforcement of the terms of this Agreement. Nothing in this Agreement shall prohibit Regal from using the arguments that form the basis of Regal's denials, affirmative defenses, and counterclaims to defend itself in future litigation. Entering into this Agreement brings certainty regarding Regal's obligation concerning the placement and location of Accessibility Aids in all its existing theatre auditoriums located within the Commonwealth of Massachusetts. By entering into this Agreement, no Regal entity is consenting to personal jurisdiction in Massachusetts. This Agreement shall be a full, complete, and final disposition and settlement of all claims between the Parties

**2.2 Term.** The term of this Agreement shall be five years from the date of the execution of this Agreement.

## **3. ADDITIONAL TERMS.**

**3.1 Free Passes for Aggrieved Parties.** Regal agrees to provide ten (10) complimentary movie passes to the Massachusetts Commission for the Blind, the Massachusetts Commission for the Deaf and Hard of Hearing, or the Attorney General's Civil Rights Division for each aggrieved blind and deaf resident ("Aggrieved Residents") of Massachusetts that filed a

complaint concerning the lack of accessibility at any Regal theatre located within Massachusetts, with any of the above referenced entities prior to July 1, 2010. After receipt of releases of liability from the Aggrieved Residents, Regal will mail the movies passes within thirty (30) days to Adam Hollingsworth, Civil Rights Division, Massachusetts Attorney General's Office, One Ashburton Street, Boston, Massachusetts, 02118.

**3.2 Control over Captioning and Description Services.** Regal agrees that it has not, nor will it, attempt to dissuade studios from captioning or providing narrative description for any motion pictures.

**3.3 Movie Circulation and Scheduling.** Subject to the availability of movies distributed with captioning and descriptive audio content and Regal's right to book feature films in the most commercially viable manner, Regal agrees to continue its good faith efforts to book and schedule captioned and described movies to be displayed in its auditoriums equipped with Accessibility Aids in a way that offers blind and deaf patrons as broad a choice of captioned and described movies as is reasonably practicable.

**3.4 Maintenance of Current Level of Captioning and Narrative Description Equipment.** Regal agrees to maintain a reasonable level of the equipment and/or devices necessary to effectively use the Accessibility Aids per equipped auditorium. If a shortage of such equipment develops, Regal will take reasonable efforts calculated to avoid shortages in the future. In addition, Regal agrees to maintain its Accessibility Aid equipment in good and working order, to promptly remedy any genuine issue with Accessibility Aid equipment identified by the Commonwealth or any Regal patron, and to provide a refund or readmission passes to any patron unable to see his/her preferred movie because of a malfunction of the Accessibility Aid equipment. Regal further agrees to provide training for its Massachusetts employees regarding the operation and maintenance of Accessibility Aid equipment, and to continue to update Regal's training curriculum, if necessary, regarding new equipment that may be installed. The Parties agree that the content, timing, need, and efficacy of any training is to be determined solely by Regal.

**3.5 Advertisement of Motion Pictures Exhibited With Captioning and/or Narrative Descriptions.** Regal agrees that it will continue to advertise the availability of captioned and descriptive audio films at each of its Massachusetts locations in a manner calculated to be viewed by patrons when they purchase tickets. Moreover, Regal agrees to continue to include in its advertisements (whether in print, internet or otherwise) and on its



website which movies are screened in auditoriums equipped with Accessibility Aids in its Massachusetts theaters. Such advertising shall be done in a manner consistent with Regal's normal business practices and with the understanding that these practices may evolve over time.

**3.6 Reporting.** Regal agrees to update the Commonwealth annually in writing following the execution of this Agreement as to Regal's ongoing efforts to install Accessibility Aids as provided by this Agreement. However, once Regal has fulfilled its obligations as set forth in Section 1.3 of this Agreement, and reports same to the Commonwealth, its reporting obligations hereunder cease. Regal agrees to send the report to Adam Hollingsworth, Civil Rights Division, Massachusetts Attorney General's Office, One Ashburton Street, Boston, Massachusetts, 02118, or his successor.

**3.7 Notice.** The Commonwealth agrees that if at any time during the term of this Agreement, the Commonwealth or any consumer reporting to the Commonwealth, believes Regal to be in material violation of any of the terms and conditions set forth herein, the Commonwealth will provide written notice to Regal's Chief Administrative Officer and Counsel, Raymond L. Smith, Jr. or his successor, of such claimed violations and provide Regal a minimum of sixty (60) days to cure any such claimed violation before seeking court intervention concerning same.

**3.8 Governing Law.** This Agreement shall be governed in all respects by the law of the State of Massachusetts.

**3.9 Amendment or Modification.** This Agreement may be modified only by means of a written agreement, signed by all Parties hereto.

**3.10 Entire Agreement.** This Agreement contains the entire understanding and agreement between the Parties regarding the matters set forth in it. No representations, warranties, or promises have been made or relied upon by any Party hereto, other than those contained herein. This Agreement supersedes any and all other prior agreements or drafts, either written or oral, between the Parties with respect to the subject matter hereof.

**3.11 Execution in Counterparts.** This document may be executed in counterparts. All Parties will sign two (2) copies of this Agreement and each copy will be considered an original.

**3.12 Force Majeure.** Failure of Regal to perform any action required by this Agreement will not subject it to any liability or remedy for damages or otherwise if such failure is caused in whole or in part by circumstances beyond the control of Regal, including, but not

limited to, acts of God, fires, accidents, earthquakes, explosions, floods, wars, labor disputes or shortages, riots, sabotage, lack of financing for its transition to digital projection associated with market conditions, unavailability of captioned motion pictures or motion pictures containing narrative description, or any similar or dissimilar circumstances beyond the control of Regal; provided, however, that Regal has timely commenced its obligations under this Agreement in good faith and with due diligence. If force majeure requires only a delay in Regal's compliance with the terms of this Agreement, then the time requirements established herein will be delayed only to the extent required by the events or circumstances constituting force majeure.

**3.13 Advice of Counsel.** The Parties represent that they have read this Agreement in its entirety and are satisfied that they understand and agree to all its provisions, and represent that they have freely signed this Agreement without coercion.

**3.14 Power and Authority to Execute.** The Parties represent that they have the power and the authority to execute and deliver this Agreement and to perform the obligations hereunder, and that each person executing this Agreement on each party's behalf has been authorized to sign on behalf of the respective party and to bind each to the terms of this Agreement.

**REGAL ENTERTAINMENT GROUP**

By: 

Raymond L. Smith, Jr.

Chief Administrative Officer & Counsel

Date: July 6, 2010

**COMMONWEALTH OF  
MASSACHUSETTS**

**MARTHA COAKLEY  
ATTORNEY GENERAL**

By: 

Adam Hollingsworth  
Assistant Attorney General  
Civil Rights Division

Date: July 29, 2010